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injuries based on negligence,—where such negligence has been accompanied by no contemporaneous injury to person or property, or where the injuries are not resultant upon some contract relation between the parties,—no recovery for mental suffering merely, is admissible. This decision appears to be in accord with the weight of authority in such cases. *Mitchell* v. *Rochester Ry. Co.* 151 N. Y. 107, 45 N. E. 354, 34 L. R. A. 781, 56 Am. St. Rep. 604: *Ewing* v. *Ry, Co.*, 147 Pa. St. 40, 23 Atl. Rep. 340; *Canning* v. *Williamstown*, 1 Cush. 451. Contra, *Mack* v. *R. R Co.*, 52 S. C. 323, 29 S. E. Rep. 905, 40 L. R. A. 679, 68 Am. St. Rep. 913; *Purcell* v. *St. Paul R. R. Co.*, 48 Minn, 134, 50 N. W. Rep. 1034; *Gulf, Etc., R. R. Co.* v. *Hayter*, 93 Texas 193, 77 Am. St. Rep. 860. SHEARMAN & REDFIELD ON NEGLIGENCE, 5th ed., § 761, state the better rule to be that damages for mental anguish caused by fright alone may be recovered in such cases, only where gross or wilful negligence is proved. The decision in this case is of especial interest as it is the first decision, upon this particular point, of the Kentucky court, which had in previous cases followed the doctrines of *So. Relle* v. *Telegraph Co.*, 55 Tex. 308, 40 Am. Rep. 805, wherein damages for mental anguish alone, in the so-called telegraph cases, were allowed. See 2 MICHIGAN LAW REVIEW. pp. 150, 226.

EJECTMENT—EVIDENCE—NEGLIGENCE—The American Telephone & Telegraph Company having for some time maintained their lines over and along the property of one Wilcox and desiring to acquire a right to do so, presented to said Wilcox a sealed instrument, which the agent of the company said was a receipt for one dollar to pay for the damage which had been done to a tree belonging to Wilcox. This receipt was in fact an instrument giving the company right to maintain poles on land of the plaintiff. Wilcox signed it without reading it. Discovering the fraud he brings suit in ejectment and to recover damages. *Held*, that the negligence of Wilcox in not reading the instrument did not bar him from showing the fraud of defendant, and, moreover, that Wilcox had a right in a court of law to show fraud as a defense to the deed. *Wilcox* v. *American Telephone and Telegraph Company* (1903), —N. Y.—68 N. E. 153.

The decision in this case is in accord with former cases decided in New York. *Albany City Savings Institution* v. *Burdick*, 87 N. Y. 40, *Smith* v. *Smith*, 134 N. Y. 62, and indicates a broader view than that taken in some cases; for example *Commissioners* v. *Younger*, 29 Cal. 172; *Bacon* v. *Markley*, 46 Ind. 116; *Administrator* v. *Gerson*, 13 Wall (U. S.) 383, which hold that even between the original parties to a transaction the party who has been negligent cannot show fraud in the other.

ELECTIONS—MARKING OF BALLOTS.—The Michigan statute provides, (Public acts of 1901, No. 214, Sec. 26), "Where only one candidate is to be elected to an office, and the elector wishes to vote for a candidate not on his party ticket, he should make a cross in the circle under the name of his party, and also make a cross in the square before the name of the candidate for whom he desires to vote on the other ticket. In such case it shall not be necessary to strike off the name of the candidate on the party ticket. If the elector wishes to vote for a candidate not on any ticket, he must write or place the name of such candidate on his ticket opposite the name of the office, and make a cross in the circle under the party name." Where an elector, having placed a cross in the circle under his party name, then erased the name of the candidate of his party for supervisor, and wrote in the name of the candidate of the opposing party, which was already printed upon the ticket, *Held*, that such vote could not be counted for the candidate whose

name was written in. *People ex rel. Anderson* v. *Byers* (1903), — Mich., — 97 N. W. Rep. 51.

This case overrules *Attorney-General* v. *Glaser*, 102 Mich. 411, 61 N. W. Rep. 648, decided in 1895, which held that such a ballot should be counted for the candidate whose name was written in. The court assigns as its reason for overruling that case, that the law was amended in 1901, as quoted above. It is interesting to note, however, that in so far as it affects the principal case, the law was amended in 1893, (Pub. Acts of 1893, page 328) prior to the decision of the *Glaser* case, but after the election concerning which that case arose, and while the change could not have affected that decision, the court called attention to the amendment and its effect in another particular, but did not call attention to the fact that that case would have been differently decided had the facts arisen subsequently to the amendment. The omission is the more striking for the reason that the *Glaser* case was the first to come before the Michigan court involving the Australian ballot law, and the court went to great length in interpreting the law for the future guidance of election officers. The decision in the principal case is an illustration of the strictness with which the courts construe and apply the provisions of the Australian ballot law, even where the intention of the voter is perfectly plain. Only one case is cited in support of the decision, *Vallier* v. *Brakke*, — S. D. —, 64 N. W. Rep. 184, but it is to be noted that under the law of South Dakota it is not competent to write the name of a candidate upon the ballot under any circumstances.

GIFTS CAUSA MORTIS—DELIVERY.—Decedent having buried sums of money in various places about his estate, and being ill and barely able to walk, took his daughter to show her the whereabouts of the money, but being too weak could not go to the various places and instead told her definitely the several places where it was concealed, with a positive declaration that he gave it to her, cautioning her not to let any one else know where it was, and advising her to leave it, until the place was rented or she needed it. *Held*, a sufficient delivery. *Waite* v. *Grubbe* (1903), — Ore. —, 73 Pac. Rep. 206.

The court held that decedent had made as complete a delivery as was possible under the circumstances and that in telling his daughter his secret he had in fact given her "the key to his safety vault." Although the case goes rather far in validating a symbolical delivery consisting merely of a declaration of gift and a disclosure of a hiding place, it is consonant with the equities of the situation and seems to be correctly decided. *Ellis* v. *Secor*, 31 Mich. 185, 18 Am. Rep. 178; *Stephenson* v. *King*, 81 Ky. 425, 50 Am. Rep. 172; *Newman* v. *Bost*, 122 N. Car. 524, 29 S. E. Rep. 848; *Thomas* v. *Lewis*, 89 Va. 1, 37 Am. St. Rep. 848, 15 S. E. Rep. 389, 17 L. R. A. 170.

GUARDIAN—SALE OF REAL ESTATE.—A was the owner of an undivided five-sevenths of a tract of land. One-seventh belonged to A's minor daughter of whom he was guardian, the remaining one-seventh belonged to A's nephew whose father was his guardian. A contracted to sell the entire tract to plaintiff in error, H, and to procure conveyances to him of the interest of the minors for a lump sum, one-seventh of which was to be paid to each minor on account of his share. Applications for orders to sell were made by guardians and obtained. Public sales were held at which H became the purchaser and the guardians reported as required by statute. In an action by A for the price of the two-sevenths, *Held*—It is not contrary to public policy or fraudulent, for a guardian, before applying for a license to sell real estate belonging to his ward, to procure the obligation of an intending purchaser to bid an adequate price at the sale, or after the confirmation to advance and